

TO: Mike McGowan, Chair  
Members of the Delta Protection Commission

FROM: Linda Fiack, Executive Director

DATE: January 25, 2007

SUBJECT: Hearing on Appeals of Actions Taken by the Yolo County Board of Supervisors on October 24, 2006 on the Clarksburg Old Sugar Mill Specific Plan and Environmental Impact Report.

**RECOMMENDED ACTIONS**

- A. Receive and consider information provided by Commission staff including:
- (1) Summary of actions taken by the Yolo County Board of Supervisors (County) on October 24, 2006 to approve the Clarksburg Old Sugar Mill Specific Plan (OSMSP) and Environmental Impact Report (EIR) (Clarksburg Project).
  - (2) Appeals of actions taken by the County filed with the Delta Protection Commission (Commission) on November 3, 2006 by the Concerned Citizens of Clarksburg and by Earth Justice on behalf of the Natural Resources Defense Council (NRDC).
  - (3) Policies of the Commission's Land Use and Resource Management Plan for the Primary Zone of the Delta (Management Plan) adopted February 23, 1995 and cited in the Appeals.
- B. Conduct public hearing relative to consistency/inconsistency of the Clarksburg Project (as approved by the County on October 24, 2006) with the policies of the Management Plan cited in the Appeals, including testimony from the County, project applicant, appellants, and the general public.
- C. Receive Commission Member input and comments relative to whether the project is consistent/inconsistent with the policies of the Management Plan cited in the Appeals.
- D. Determine that:
- (1) The Clarksburg Project is "Consistent" With One or More of the following Policies of the Management Plan cited in the Appeals: Agriculture Policy 4; Land Use Policy 2; Land Use Policy 3; Land Use Policy 4; Land Use Policy 7; Utilities and Infrastructure Policy 3; Levees Policy 1; Levees Policy 2; Levees Policy 3; Levees Policy 4 and/or Levees Policy 5; and

- (2) The Clarksburg Project is “Inconsistent” With One or More of the Following Policies of the Management Plan Cited in the Appeals: Agriculture Policy 4; Land Use Policy 2; Land Use Policy 3; Land Use Policy 4; Land Use Policy 7; Utilities and Infrastructure Policy 3; Levees Policy 1; Levees Policy 2; Levees Policy 3; Levees Policy 4 and/or Levees Policy 5.
- E. Direct Staff to Return to the Commission on February 22, 2007 with Recommended Findings for adoption as to consistency/inconsistency of the Clarksburg Project with the policies of the Management Plan cited in the Appeals pursuant to actions taken by the Commission.
- F. Receive Tolling Agreement Relating to Potential Challenges to Certain Actions of the Delta Protection Commission (*Attachment A*).

### **REASONS FOR RECOMMENDED ACTIONS**

The Commission has determined, by actions taken on November 16, 2006 (*Attachment B*), that it has jurisdiction over the Clarksburg Project because it is (1) located in the Primary Zone of the Delta, and (2) constitutes development. The Commission further determined that the filed Appeals each contain appealable issues. The recommended actions would assure the Commission’s compliance with its regulations and the Delta Protection Act (Act) by fulfilling its role as an appeal body when an action taken by a local entity on a development project in the Primary Zone of the Delta is appealed to the Commission by a Third Party.

### **SUMMARY OF STAFF CONCLUSIONS AS TO CONSISTENCY OF THE CLARKSBURG PROJECT WITH THE MANAGEMENT PLAN (relative to Policies cited in the Appeals)**

Staff has provided background information in this staff report that includes: relative findings and declarations, definitions, and Management Plan provisions provided in the Act; summaries of the actions taken by the County on the Clarksburg Project; the Policies cited in the Appeals filed by Earth Justice and the Concerned Citizens of Clarksburg; the specific language of the Management Plan Policies cited in the Appeals (and relevant regulations); Commission staff’s comments to the County during the environmental review process for the Project (relative to the cited Policies); and the County’s statements from the environmental documents relative to consistency with the cited Policies. Taking into consideration this information, the following conclusions are provided as guidance to the Commission in making a determination of consistency or inconsistency of the project with the Policies cited in the Appeals:

#### Agriculture Policy 4, and Land Use Policies 2 and 3.

Relative to consistency with Agriculture Policy 4 and Land Use Policy 2, the ag-related components of the project appear to reflect provisions of the Agriculture Element of the County General Plan and the County Right to Farm Ordinance which support long-term viability of commercial agriculture in the County (including the Delta by incorporation of the Management Plan). It is incumbent upon the County to demonstrate that these conditions also provide satisfactory consistency with the cited policies of the Management Plan, relevant to the non-agricultural components of the project, to: promote agriculture as the primary land use in the

Primary Zone; include clustering intended to support efficient use of agricultural lands not to support new urban development in the Primary Zone; and that the project would support long-term agricultural viability and open space values of the Primary Zone.

With respect to Land Use Policy 3, the Management Plan suggests, but does not mandate, that buffers between agricultural and urban uses include berms and vegetation, as well as setbacks of 500 to 1000 feet. From the information provided by the County, it appears that the project would not include buffers that amount to the “recommended” 500 to 1000-foot separation. It is therefore necessary for the County to demonstrate that the conditions of the Clarksburg Project includes assurances that appropriate buffer areas are provided to prevent conflicts between any proposed use and existing agricultural use that in essence would be equal to the effectiveness of the suggested buffers referenced in the Policy. Additionally, it should be demonstrated that such buffers would assure that the ability of the nearby Willowpoint Vineyard agricultural operation to obtain spraying permits would not be compromised.

Utilities and Infrastructure Policy 3, and Land Use Policy 4.

With respect to Utilities and Infrastructure Policy 3, the issues primarily revolve around whether the sewage treatment and disposal facilities associated with the project constitute “new” sewage treatment facilities, or enhancement of existing facilities. Relative to this issue, the question has arisen as to whether Policy 3 is applicable to sewage treatment and disposal facilities related to agricultural operations, human-related activities, or both.

In an effort to better understand the “intent” of Policy 3, staff has reviewed the Utilities and Infrastructure Background Report, dated January 1994, which was adopted on February 23, 1995 as the supporting document for the findings, policies and recommendations of the Utilities and Infrastructure Chapter of the Management Plan (*Attachment C*). Also reviewed was the Notice of Proposed Adoption of Regulation Governing Siting of New Sewage Treatment Facilities and Areas for Disposal of Sewage Effluent and Sewage Sludge in the Primary Zone of the Sacramento-San Joaquin Delta filed with the State Office of Administrative Law on February 23, 1996 (Notice). Additionally, staff has reviewed the “draft” Notice dated February 13, 1996 as well as the related Commission staff report to the Commission dated February 23, 1996 and approved Commission meeting Minutes, including those dated March 28, 1996 (Agenda Item No. 10) and April 25, 1996 (Agenda Item No. 11) (*Attachment D*).

These documents do not appear to specifically call out a distinction between agricultural and human waste treatment/effluent discharge. Therefore, the remaining question for which clarifying information is needed, relative to Policy 3, is whether the wastewater treatment facilities historically utilized at the site are proposed to be enhanced to support the project while not constituting “new” facilities. It is, therefore, incumbent upon the County to satisfactorily address this issue for the Commission in order for a finding to be made that the project does not constitute new sewage treatment facilities (including storage ponds), and new areas for disposal of sewage effluent and sewage sludge, and is therefore consistent with Utilities and Infrastructure Policy 3 of the Management Plan.

It must also be demonstrated by the County that all permits and regulatory authorities, including the State Water Quality Control Board, will be obtained and complied with over the life of the project.

With respect to Land Use Policy 4, pursuant to staff's review, it appears that the location of the non-agricultural residential development components of the project is within the existing community boundary of Clarksburg (relative to the determination that the project constitutes infill). However, what remains to be demonstrated by the County is that there is sufficient support infrastructure and flood protection in place to efficiently and effectively accommodate the project and that enhancement of such facilities, in order to support the development component of the project, is not inconsistent with Land Use Policy 4.

#### Levees Policies 1-5 and Land Use Policy 7

In order for the Commission to conclude that the project is consistent with Levees Policies 1-5 and Land Use Policy 7, it is incumbent upon the County to satisfactorily demonstrate the following:

Assurances should be provided by the County that the project is consistent, compatible and compliant with appropriate flood control, and public health and safety entities, and regulations, guidelines and ordinances, including FEMA, the Corps of Engineers, State Reclamation Board, Department of Water Resources, Office of Emergency Services, Homeland Security, and the appropriate local reclamation districts, and that all comments provided by such entities have been satisfactorily addressed and incorporated into the project.

Such assurances should demonstrate that compliance as noted has taken into consideration the requirements of permitting entities and regulatory authorities "over the life of the project."

A demonstration that the priority for maintenance and rehabilitation of the levees along the Sacramento River, adjacent to the project, would not be compromised by structures or activities resulting from the project and that established setback requirements to assure such priority for maintenance and rehabilitation, during all phases of the project, have been incorporated into the project and activities related to the project.

How emergency response and coordination, at the local, state and federal levels, has been taken into consideration, and what formal commitments to such response and coordination, if any, would be put into place as a result of the project should be documented by the County.

#### **BACKGROUND**

The Act contains Findings and Declarations made by the Legislature that include:

**Section 29702.** *The basic goals of the state for the delta are the following: (a) Protect, maintain, and, where possible, enhance and restore the overall quality of the delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities; (b) Assure orderly, balanced conservation and development of delta land resources; and (c) Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety.*

**Section 29703 (c).** *Agricultural lands located within the primary zone should be protected from the intrusion of nonagricultural uses.*

**Section 29704** states ... *that improvements and continuing maintenance of the levee system will not resolve all flood risks and that the delta is inherently a flood prone area wherein the most appropriate land uses are agriculture, wildlife habitat, and, where specifically provided, recreational activities, and that most of the existing levee systems are degraded and in need of restoration, improvement, and continuing management.*

**Section 29707** states ...*there is no process by which state and national interests and values can be protected and enhanced for the delta, and that, to protect the regional, state, and national interests for the long-term agricultural productivity, economic vitality, and ecological health of the delta resources, it is necessary to provide and implement delta land use planning and management by local governments.*

**Section 29709 (a).** *Regulations of land use and related activities that threaten the integrity of the delta's resources can best be advanced through comprehensive regional land use planning implemented through reliance on local government in its local land use planning procedures and enforcement.*

The Act contains Definitions that include:

**Section 29730.** *"Restoration" means actions which return a degraded or deteriorated area to a level of increased productivity, environmental quality, or beneficial values.*

The Act contains provisions for a Resource Management Plan that include:

**Section 29760 (b) (12).** *Protect the delta from any development that results in any significant loss of habitat or agricultural land.*

**Section 29763.5.** *The Commission shall act on proposed local government general plan amendments within 60 days from the date of submittal of the proposed amendments. The commission shall approve the proposed general plan amendments by a majority vote of the commission membership, with regard to lands within the primary zone, only after making all of the following written findings as to the potential impact of the proposed amendments, to the extent that those impacts will not increase requirements or restrictions upon agricultural practices in the primary zone, based on substantial evidence in the record: (a) The general plan, and any development approved or proposed that is consistent with the general plan, are consistent with the resource management plan. ...(d) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in increased nonpoint source pollution. ...(g) The general plan, and any development approved or proposed that is consistent with the general plan, will not expose the public to increased flood hazard. ...(i) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or impairment of levee integrity. ...(k) The*

*general plan, and any development approved or proposed that is consistent with the general plan, will not result in any increased requirements or restrictions upon agricultural practices in the primary zone.*

**Section 29765.** *Prior to the commission approving the general plan amendments of the local government, the local government may approve development within the primary zone only after making all of the following written findings on the basis of substantial evidence in the record: ... (c) The development will not result in increased nonpoint source pollution or soil erosion, including subsidence or sedimentation. ... (f) The development will not expose the public to increased flood hazards. (g) The development will not adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on private or public land. (h) The development will not result in the degradation or impairment of levee integrity. ... (j) The development will not result in any increased requirements or restrictions upon agricultural practices in the primary zone.*

**County actions on the project have included the following:**

In October 1995, the County incorporated the Management Plan into the County General Plan. In March of 2002, the Clarksburg General Plan was adopted by the County. The Old Sugar Mill site, the former location of a sugar beet processing plant located within the town of Clarksburg, between Willow Avenue and South River Road, is designated in the Clarksburg General Plan as “Specific Plan.” This designation requires that a specific plan be prepared and adopted for the area prior to its reuse.

In 2002, Clarksburg Investment Partners, LLC applied to the County for authorization to allow for a mixed land use project at the 105.4-acre site owned by Carvalho-Stanich Properties, Inc. The proposed OSMSP is a comprehensive plan that was prepared to address the specific reuse of the site. The proposed OSMSP would change the existing Heavy Industrial (M-2) zoning of the site to a mix of residential, commercial, industrial, open space and public safety land uses.

Pursuant to the application, the County initiated the process for considering the Clarksburg Project. The proposed OSMSP and related CEQA documentation (DPEIR, Re-circulated DPEIR and EIR) have been before the County Planning Commission for consideration, including: discussion on August 27, 2004; a public hearing on the DPEIR on September 21, 2004; receipt of a staff report and public testimony on the re-circulated DPEIR on December 8, 2005; and a public hearing on March 30, 2006 for a recommendation to the Board of Supervisors.

On March 1, 2006, the Clarksburg General Plan Advisory Committee (Committee), comprised of citizens of Clarksburg, provided its recommendations on the Clarksburg Project to the Planning Commission. Among the Committee’s recommendations was a reduction in the requested number of housing units to 123 as compared to the 162 proposed by the applicant (**Attachment E**).

The March 30, 2006 actions of the Planning Commission for recommendation to the Board of Supervisors included: certification of the EIR and the Mitigation Monitoring Plan; adoption of the OSMSP and design guidelines for 162 units; amendment to the Clarksburg General Plan to incorporate the OSMSP in text and as an attachment; rezoning of the property from Heavy

Industrial (M-2) to appropriate zones consistent with the final OSMSP land use designations; and execution of a Development Agreement (*Attachment F; exhibits can be viewed at the office of the Commission*).

The actions taken by the Planning Commission resulted in a County staff recommendation to the Board of Supervisors on September 12, 2006 for approval of the OSMSP mixed use project at the site that included: industrial use (29.7 acres); residential (28.2 acres including 106 traditional single family and 56 cluster/cottage units); commercial (24.7 acres); public (5.7 acres); roadways (3.9 acres); waterfront (3.2 acres).

The actions taken by the Planning Commission for approval of the OSMSP included: a public hearing on the proposed OSMP and EIR; direction to staff on the refinement and edit of the OSMSP land use plan, modifications to the Mitigation Measures and Mitigation Monitoring Plan, and adequacy of the Development Agreement; adoption of the Resolution indicating the intent to consider certification of the EIR and approval of the OSMSP subject to direction to staff's return with a full approval package consisting of a resolution certifying the FPEIR and adopting the modified Mitigation Monitoring Plan, Resolution approving the OSMSP and modified Design Guidelines, Resolution amending the text of the Clarksburg General Plan to reference/incorporate the final OSMSP, Ordinance rezoning the project property from Heavy Industrial (M-2) to appropriate zones consistent with the final Specific Plan Land Use Diagram, an Ordinance approving a Development Agreement with community benefit items and other specified terms, and continuance of the hearing to October 17, 2007 for final action (*Attachment G; exhibits can be viewed at the Yolo County web site/board agendas/September 12, 2006/Item 8.01*).

As a part of the Board's actions, County staff was directed to respond to four issues raised during the September 12, 2006 public hearing that included: Development of a scope of work for satisfying the geotechnical study requirements of Mitigation Measure 4.7.8a; requirement for future homeowners to carry flood insurance; ensured timely construction of a dock on (on parcel 9); and request by the River Delta Unified School District for additional development fees to address the impact of the proposed project on school facilities.

On October 24, 2006, the Board took the following actions, which included staff's response to addressing the four issues noted at the September 12, 2006 hearing: (1) Receive a staff presentation, hold a public hearing, and accept public comments regarding the OSMSP approval package; (2) Adopt a Resolution certifying the EIR for the OSMSP and related approvals; (3) Adopt a Resolution approving the OSMSP and Design Guidelines (for 162 units) as modified, making a determination of consistency with the Clarksburg General Plan and Countywide General Plan, making related findings and determinations required by CEQA and adopting the Mitigation Monitoring Plan as modified; (4) Adopt an Ordinance creating the OSMSP zone and rezoning the land included therein; and (5) Adopt an Ordinance adopting and approving a Development Agreement for the OSMSP project (*Attachment H; exhibits can be viewed at the Yolo County web site/board agendas/October 24, 2006/Item 8.02*).

## APPEALS

In response to the approval of the Clarksburg Project by the County on October 24, 2006, two appeals were filed with the Commission on November 3, 2006; one by Earth Justice on behalf of NRDC, and one by the Concerned Citizens of Clarksburg (represented by James P. Pachl).

The Earth Justice/NRDC Appeal cited the following reasons for appeal:

The plain language of the Delta Protection Act (Act) and its legislative history reveal that the Clarksburg Project is located within the Primary Zone of the Delta; the Clarksburg Project is in direct conflict with the Act because it constitutes “development” subject to the Act; and the Act mandates that development be approved only if consistent with the Act and Resources Management Plan (a requirement the project fails to meet) because it:

- Includes wholly new sewage treatment facilities in violation of Utilities and Infrastructure Policy 3;
- Authorizes new urban development and new infrastructure in the primary zone in violation of Land Use Policies 2, 3 and 4, and Agriculture Policy 4; and
- Exposes the public to increased flood hazard in violation of Levees Policies 1 through 5 (*Attachment I; exhibits can be viewed at the office of the Commission*).

The Concerned Citizens of Clarksburg Appeal cited the following reasons for appeal:

The Clarksburg Project is in the Primary Zone of the Delta and is inconsistent with the Yolo County General Plan and the Land Use and Resource Management Plan for the Delta Primary Zone:

- Utilities and Infrastructure Policy 3;
- Land Use Policies 2, 4, and 7; and
- Levees Policies 1 and 3 (*Attachment J*).

On November 16, 2006, the Commission conducted a hearing, pursuant to California Code of Regulations, title 14, section 20008, and determined that it has jurisdiction over this matter because (1) the project location is in the Primary Zone of the Delta (unanimous) and (2) the project constitutes “development” (15 for/1 opposed). It also determined that both of the appeals include appealable issues (unanimous).

## LAND USE AND RESOURCE MANAGEMENT PLAN FOR THE PRIMARY ZONE OF THE DELTA POLICIES (cited in Appeals)

### Utilities and Infrastructure

Policy 3: *New sewage treatment facilities (including storage ponds) and new areas for disposal of sewage effluent and sewage sludge shall not be located within the Delta Primary Zone. The Rio Vista project, as described in the adopted Final Environmental Impact Report for such project, and the Ironhouse Sanitary District use of Jersey Island for disposal of treated wastewater and biosolids are exempt from this policy.*



### Land Use

*Policy 2: Local government general plans, as defined in Government Code Section 65300 et seq., and zoning codes shall continue to strongly promote agriculture as the primary land use in the Primary Zone; recreation land uses shall be supported in appropriate locations and where the recreation uses do not conflict with agricultural land uses or other beneficial uses, such as waterside habitat. County plans and ordinances may support transfer of development rights, lot splits with no increase in density, and clustering to support long-term agricultural viability and open space values of the Primary Zone. Clustering is intended to support efficient use of agricultural lands, not to support new urban development in the Primary Zone. Local governments shall specifically indicate when, how, and why these options would be allowed in the Primary Zone.*

*Policy 3: New residential, recreational, commercial, or industrial development shall ensure that appropriate buffer areas are provided by those proposing new development to prevent conflicts between any proposed use and existing agricultural use. Buffers shall adequately protect integrity of land for existing and future agricultural uses. Buffers may include berms and vegetation, as well as setbacks of 500 to 1,000 feet.*

*Policy 4: New non-agricultural residential development, if needed, shall be located within the existing Primary Zone communities where support infrastructure and flood protection are already provided.*

*Policy 7: Structures shall be set back from levees and areas which may be needed for future levee expansion.*

### Agriculture

*Policy 4: Local governments shall support long-term viability of commercial agriculture in the Delta because of its economic and environmental importance to the State and local communities.*

### Levees

*Policy 1: Local governments shall ensure that Delta levees are maintained to protect human life, to provide flood protection, to protect private and public property, to protect historic structures and communities, to protect riparian and upland habitat, to promote interstate and intrastate commerce, to protect water quality in the State and federal water projects, and to protect recreational use of the Delta area. Delta levee maintenance and rehabilitation shall be given priority over other uses of the levee areas. To the extent levee integrity is not jeopardized, other uses, including support of vegetation for wildlife habitat, shall be allowed.*

*Policy 2: If levee guidelines are needed, local governments shall adhere to guidelines for federal and local levee maintenance and construction at a minimum as stipulated in the Flood Hazard Mitigation Plan guidelines developed by California Office of Emergency Services and the Federal Emergency Management Agency in the 1987 agreement, and set longer term goals of meeting Public Law 84-99 (Emergency Rehabilitation of Flood Control Works or Federally Authorized Coastal Protection Works), standards administered by the Corps of Engineers. If vegetation standards are needed, local governments shall adopt the adopted vegetation guidelines, which promote native grasses and limited vegetation on specific areas of the levee.*

*Policy 3: Through flood ordinances based on Flood Emergency Management Act model ordinances, developed by the International Conference of Building Officials and included in the Uniform Building Code, local governments shall carefully and prudently carry out their responsibilities to regulate new construction within flood hazard areas to protect public health, safety, and welfare. Increased flood protection shall not result in densities beyond those allowed under zoning and general plan designations in place on January 1, 1992 for lands in the Primary Zone.*

*Policy 4: Local governments shall ensure that existing programs for emergency levee repair should be strengthened and better coordinated between local, State, and federal governments and shall include: interagency agreements and coordination; definition of an emergency; designation of emergency funds; emergency contracting procedures; emergency permitting procedures; and other necessary elements.*

*Policy 5: Local governments shall use their authority to control levee encroachments that are detrimental to levee maintenance.*

#### **COMMISSION STAFF COMMENTS PROVIDED TO THE COUNTY DURING THE ENVIRONMENTAL REVIEW PROCESS (relative to Policies cited in Appeals)**

##### Primary Zone/Management Plan

Commission staff provided letters of comment on the DPEIR (October 25, 2004) and on the Re-circulated DPEIR (December 12, 2005) (*Attachment K*), and also testified before the County Planning Commission as to the content of the letters. The comments provide a determination that the location of the Clarksburg Project is in the Primary Zone and thus approval of the proposed project would require consistency with the Act and the Management Plan. The following comments were provided (relative to the Management Plan policies cited in the Appeals):

##### Utilities and Infrastructure (Policy 3)

*The DEIR should determine if the proposed sewage treatment facility meets the exemption language of the Delta Protection Act, or Utilities and Infrastructure Policy 3 of the Commission's Plan. The DEIR should also include alternatives that evaluate construction of a pipeline to the West Sacramento sewer line, and the regional waste water treatment plant in Elk Grove, and should evaluate using traditional septic tank systems, as is currently the practice in Clarksburg.*

##### Land Use (Policies 2, 3, 4 and 7)

*The DEIR should include additional analysis of the overall concept of modifying the proposed development of the site from Heavy Manufacturing that was historical directly related to the agricultural crops of the surrounding Delta region, to Special Plan that focuses on residential (a use prohibited under the M-2 zoning), commercial, industrial, office, hospitality public, and waterfront and open space uses. Analysis should include the need for Manufacturing Sites to support agricultural production in the area. In other parts of the Delta, permits have been issued for packing sheds, ag equipment manufacture, repair and storage, bulk wine storage,*

*wineries and alfalfa pellet manufacture. While the winery and associated crushing and associated wine grape processing appears to support local agriculture, other proposed uses do not. The County should determine if this site is developed for residential and other non-agricultural related businesses, whether there would be a need in the future to convert ag lands to ag support industry sites.*

*In the proposed project, the entire Area B is designated for support uses – wastewater treatment, storage and disposal, and surface runoff detention. The proposal precludes use of 35 acres for any other use. The Clarksburg General Plan suggests that Area B be used for Heavy Commercial and Light and Heavy Industrial, including Research and Development. The DEIR should weigh the value of dedicating approximately one third of the site to infrastructure to support development of the other two-thirds of the site; a choice which provides no fiscal or community benefit to the existing community.*

*The DEIR should include additional analysis about the appropriate size of any needed buffers. The existing agronomic practices on nearby agricultural lands should be considered, and after consultation with an agronomic expert or the County Ag Commissioner, a buffer should be incorporated on the project site to ensure that there will not be conflicts between the existing ag and any proposed uses. Ag activities that should be considered include: cultivation, application of authorized sprays, tilling, harvesting, etc. For example, many vineyards are harvested at night; a buffer between residential development and a vineyard may need to be wide, and include a berm and landscaping to minimize intrusion of dust, noise, and lights associated with night harvesting.*

#### Levees (Policies 1-5)

*The DEIR should include more detailed information about the levees within the project boundary. The DEIR should include elevations of the site (above sea level), a current cross section of the levee, and the 100-year flood elevation of the Sacramento River. The cross section of the levee should include the toe of the levee and the 10-foot minimum setback required by the State Reclamation Board. The DEIR should analyze possible future needs for levee work and levee maintenance on the levee on the inland side of the levee and for levee inspections, and determine if the proposed project should include an additional setback from the toe of the levee in order to accommodate any needed setbacks or levee maintenance in the future. Uses within the setback could include landscaping, pedestrian and bike paths, public parking, internal roadways, internal surface drainage, etc.*

*The DEIR concludes that any risks to the levee adjacent to the proposed project from a seismic event are less-than-significant and no mitigation measure is required (p.4.12-14). However, there is no engineering evaluation of the levee; this assumption is based on the fact that the levee was built for the Corps of Engineers and is maintained by RD 999. The DEIR state that the California State Geologist has not mapped fault lines in the vicinity of the proposed project. The DEIR should include an engineering evaluation of the existing levee, its ability to provide an appropriate level of protection from flooding, and its vulnerability to damage in an earthquake – the DEIR states the “project site would likely experience at least one major earthquake (greater than moment magnitude 6) within the next 30 years.”*

**COUNTY'S RESPONSE TO COMMISSION COMMENTS CONSIDERED IN THE  
OCTOBER 24, 2006 ACTIONS FOR APPROVAL OF THE CLARKSBURG PROJECT  
(relative to Policies cited in Appeals)**

Primary Zone/Management Plan

The County responded to the October 25, 2004 comment letter that County Counsel determined that *although the project is physically located in the Primary Zone, as defined in statute, it nonetheless would not constitute "development" within the meaning of the Act, and that accordingly, the project would not have to be consistent with the Management Plan.*

Similarly, but not precisely, the County's response to the December 12, 2005 letter of comment was that *County Counsel determined that the project may be in the Primary Zone, but nonetheless would qualify for an exclusion from being classified as "development" that must be consistent with the Management Plan.*

It was further stated by the County, however, that *despite the disagreement regarding the applicability of the Management Plan to the Clarksburg Project, County staff analyzed consistency with applicable land use plans, including all policies set forth in the Management Plan and concluded the project would be consistent.*

NOTE: the November 16, 2006 actions taken by the Commission determined that the Clarksburg Project is in the Primary Zone and constitutes "development," thereby requiring consistency with the Management Plan.

Utilities and Infrastructure (Policy 3)

*...The project is consistent as the proposed STEP system would be located in the same area as the system for the prior use and is a replacement system for the redevelopment of the property.*

*...It is by no means clear that Utility and Infrastructure Policy P-3 from the DPC Management Plan would prohibit wastewater disposal in this area because the area had previously been used for sewage treatment. By prohibiting "new sewage treatment facilities...and new areas for disposal of sewage effluent and sewage sludge, the DPC Management Plan effectively grandfathered all such facilities existing as of 1995 (the adoption of the Plan). The terms sewage, effluent, and sludge have broad meanings, which are not necessarily limited to human by-products. The DPC Management Plan does not distinguish between municipal wastewater and industrial wastewater. Thus, the distinction drawn by the comment is not reflected in the DPC Management Plan. Footnote: Sewage is defined simply as "liquid and solid waste carried off in sewers or drains" (The American Heritage Dictionary of the English Language, Fourth Edition). Effluent is defined as "a discharge of liquid waste, as from a factory or nuclear plant" (ibid.). Sludge is defined as "semisolid material such as the type precipitated by sewage treatment" (ibid).*

Land Use (Policies 2, 3, 4 and 7)

*Policy 2 concerns the local government discretionary approvals and planning documents as they relate to development within agricultural areas and similar undeveloped portions of the Primary Zone. It does not appear intended to discourage infill projects within existing towns...*

*...The density restriction on “lot splits” in this policy is intended to protect agricultural areas and open space. The project site is a former industrial site that provided support facilities for agriculture. The proposed uses would primarily do the same. To borrow the policy language, the goal is to “support efficient use of agricultural lands.” The OSMSP supports the continued efficient use of surrounding agricultural lands precisely because it does not propose to convert any of those uses. Mitigation Measure 4.1.2a requires a 300 foot buffer which is consistent with the DPC recommendation, the County of Yolo General Plan, and the requirements of the County Agricultural Commission.*

*...The proposed water and sewage systems are both small independent systems. For the proposed project they would also be more environmentally sound than construction of many new septic systems. Additionally, the sewage system would not be a “new” system – rather it would replace the prior system that served this site.*

*Policy 3 applies to new development projects, not infill projects located within developed areas, and seeks to minimize conflicts between urban and agricultural areas through buffers. Even if this policy were applicable to the project, it does not mandate a buffer of any particular width.*

*The project proposes 77.1 acres (73 percent) for agricultural and related land uses. This includes the winery and associated support uses. The remaining 28.3 acres (27 percent) is for residential use. It also provides a mixed use element to the project, which is consistent with good planning practice and County policy. The winery would support the emerging grape region, and the residential component addresses the need for housing in Clarksburg for existing families or new workers. The Specific Plan clearly does not have a residential focus as incorrectly stated by the commenter.*

*Policy 4 supports locating “new non-agricultural residential development...within the existing Primary Zone communities where support infrastructure and flood protection are already provided.” The project is consistent with this policy...*

*...The OSMSP is within the boundary of Clarksburg. The term “already provided,” taken to an extreme, would preclude almost all housing construction. New residential development, with the exception of reconstruction on existing lots, or construction on finished subdivision lots where all utility hookups are available requires some extension of utilities. The OSMSP already has facilities for flood protection, electricity, water, stormwater, and access (public roads). Most of these services, most notably wastewater (which will require centralized treatment instead of the septic system currently in use), would have to be expanded to meet the needs of development within the OSMSP. A reasonable interpretation of Policy 4 is to discourage new residential development in areas currently used for agriculture that have never been used for urban land uses and have no relation to a town or community.*

*...Area B is approximately 32.7 acres, of which 14.2 acres would be used for infrastructure, including wastewater treatment, and approximately 2.5 acres for processing winery wastewater. Also, about 2 acres is proposed for a stormwater detention basin on Area A. This represents a*

*total of approximately 18.7 acres or 18 percent of the 105.4 acres of land within the OSMSP (considerably less than the “one third” noted by the commenter). It is not unusual for this amount of a site to be needed for support infrastructure. However, this dedication of land to infrastructure uses must be considered in light of the ability to develop the remaining 82 percent of the OSMSP. Without some system of centralized wastewater treatment, it is infeasible to develop the OSMSP except at the lowest density and intensity. This would run counter to County and regional policies encouraging “smart” growth. Similarly, any significant increase in building intensity (impermeable surfaces) will require some onsite detention of stormwater.*

*It is recognized the acreage would be required to provide infrastructure for the OSMSP. However, the use of additional septic systems onsite would present challenges to groundwater quality. Also the provision of a centralized system benefits the community by providing a better method of treatment. Historically this area was used for wastewater disposal. Low-intensity land uses that produce no or extremely low wastewater flows, such as storage and warehousing, small-scale retail, and rural residential development may be feasible without additional wastewater and stormwater infrastructure. The alternative to using a portion of the OSMSP area for infrastructure is not more commercial and industrial development, as stated in the comment, but severe limitations on any potential development in the OSMSP.*

*...the Delta Land Use and Resource Management Plan states that buffers shall “adequately protect integrity of land for existing and future agricultural uses. Buffers may include berms and vegetation, as well as setbacks of 500 to 1,000 feet.” ...The operative phrase in the Management Plan policy is “may include,” which does not prohibit a local jurisdiction from adopting a different buffer policy. There is no DPC requirement for a 500-to 1,000-foot setback...*

*The goal of the County’s agricultural buffer policy is the protection of both agricultural operations and sensitive land uses that may be adjacent to such operations. Section 3.13 of the Yolo County General Plan Agricultural Element discusses the policy and its rationale. With regard to nighttime activities, it should be noted that these activities primarily affect residential land uses, which are located the greatest distance from active agricultural operations, and would face away from such operations...*

*..The design of the OSMSP also discourages interference with agricultural operations by placing residential development at the south end, adjacent to the current community and away from agricultural land uses. Commercial, industrial, hospitality, and infrastructure uses would be the uses closest to agricultural land uses.*

*Policy 7: This policy requires setbacks from levees “and areas which may be needed for future levee expansion.” Mitigation measures are proposed to ensure that the project includes appropriate setbacks... ..These measures require the establishment of a 300-foot levee protection zone, which, following an evaluation of portions of the levee on the project site, may be reduced to a minimum of 50 feet...*

#### Agriculture (Policy 4)

*...The goal of Yolo County's agricultural buffer policy is the protection of both agricultural operations and sensitive land uses that may be adjacent to such operations. Section 3.13 of the Yolo County General Plan Agricultural Element discusses the policy and its rationale. With regard to nighttime activities, it should be noted that these activities primarily affect residential and uses, which are located the greatest distance from active agricultural operations, and would face away from such operations...*

*Willowpoint Vineyard, located to the west of the project site, is subject to an agricultural easement in perpetuity held by the Yolo Land Trust. Willowpoint Vineyard is not under a Williamson Act contract.*

#### Levees (Policies 1-5)

*...The intent of the mitigation measures is to ensure protection of the levees and the safety of the residents, consistent with the Levee Policies in the DPC Land Use and Resource management Plan. ...The project would be consistent with these policies.*

#### **OTHER AGENCY/INTERESTED PARTY INVOLVEMENT**

The Office of the State Attorney General provided input and support for this staff report. Several letters of comment have been received as noted in the attachment to the Minutes of the November 16, 2006 meeting and Attachment L of this staff report (listing of correspondence received between November 17, 2006 and January 10, 2007). As noted in Attachments I and J, letters were received from Earth Justice on behalf of NRDC, and Jim Pachal on behalf of the Concerned Citizens of Clarksburg, providing information to be considered in the preparation of this staff report.

#### **ATTACHMENTS:**

- A.** Tolling Agreement
- B.** Draft Minutes of November 16, 2006 Commission Meeting (including listing of exhibits and correspondence entered into the record)
- C.** Background Report on Utilities and Infrastructure (*pertinent sections*)
- D.** Notice of Proposed Adopted Regulations and Related Meeting Agenda and Minutes (*pertinent sections of Minutes*)
- E.** Clarksburg General Plan Advisory Committee Report Summary
- F.** Planning Commission Staff Report, March 30, 2006 (*attachments on file w/Commission*)
- G.** Board of Supervisors Staff Report, September 12, 2006 (*attachments on file w/Commission*)
- H.** Board of Supervisors Staff Report, October 24, 2006 (*attachments on file w/Commission*)
- I.** Earth Justice/NRDC Appeal (*exhibits on file w/Commission*) and Letter dated January 2, 2007
- J.** Concerned Citizens of Clarksburg (James P. Pachl) Appeal
- K.** Commission Staff Comment Letters (Margit Aramburu, October 25, 2004/Linda Fiack, December 12, 2005)
- L.** List of correspondence received (November 17, 2006 through January 10, 2007)